

**WEST VALLEY CITY
BOARD OF ADJUSTMENT
MINUTES**

January 4, 2017

The meeting was called to order at 6:04 p.m. by Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Necia Christensen, Russell Moore, Sandy Naegle, Scott Spendlove, and William Whetstone

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman and Brenda Turnblom

WEST VALLEY CITY LEGAL DEPARTMENT:

Adrienne Bossi

AUDIENCE

Approximately twenty one (21) people were in the audience.

B-6-2016
Delgado Variance
2808 South 6400 West
A Zone

REQUEST:

Robert and Leslie Delgado are requesting a variance from Section 7-2-118(2) of the West Valley City Code. This section requires that in front yards, a 20-foot setback from the front property line shall be maintained for fences over four feet in height. The applicants are requesting a frontage variance of 20 feet in order to keep an existing vinyl fence at the back of the property line.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends low density and agricultural land uses.

- ☐ The subject property is known as lot 104 in the Bluegrass Meadows Phase 1 Subdivision. This subdivision was recorded with the office of the Salt Lake County Recorder in April 1998. The subdivision is entirely zoned for agricultural uses with all properties being a minimum half acre in size.
- ☐ The Delgados were informed by Ordinance Enforcement in November 2016 the front yard fencing was in violation of the City's fencing standards. The ordinance states that for fencing in front yards, a 20-foot setback from the front property line shall be maintained for fences over 4 feet in height. Fences 4 feet or less in height which are at least 50% transparent, may be allowed up to the property line. No solid fence over 3 feet in height shall be allowed closer than 20 feet to the front property line.
- ☐ The property in question sits at the northwest corner of 6400 West and Parkway Boulevard. The dwelling was constructed in 1999 and was positioned facing 6400 West. Therefore, the area on the east side of the lot is considered the front yard.
- ☐ As mentioned previously, when the dwelling was constructed, it was positioned facing east. Had the dwelling faced north, the property owner could have installed a 6-foot fence at the back of the sidewalk along 6400 West as it is now. With the builder facing the dwelling to the east, it does restrict the ability of utilizing the whole portion of agricultural land available in the A zone.
- ☐ Although the setback of the fence along 6400 West and a portion of Parkway Boulevard does exceed the height requirement, the applicants did install the fence taking into account the sight triangle at the intersection of 6400 West and Parkway Boulevard. In fact, the

fence was placed well outside of the sight distance area providing a clear view for vehicular traffic.

- ☐ After discussing the variance option with staff, the Delgado's decided to pursue a variance from the Board of Adjustment. Their primary reason is that the fence allows them to fully utilize their agriculturally zoned property. If the fence was moved back to the setback line, they would lose nearly 4,000 square feet of land on which they house their animals.
- ☐ To assist the Board of Adjustment in its decision, staff has provided some photos of the property illustrating the fence and its location. The applicant has provided a letter to the Board addressing the variance criteria as required by State Law.

☐ **ORDINANCE SUMMARY:**

Section 7-2-118(2) of the West Valley City Code reads as follows:

For fencing in front yards, a 20-foot setback from the front property line shall be maintained for fences over 4 feet in height. Fences 4 feet or less in height which are at least 50% transparent, may be allowed up to the property line. No solid fence over 3 feet in height shall be allowed closer than 20 feet to the front property line.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

Applicants:

Roberto & Leslie Delgado
2808 South 6400 West
Salt Lake City, UT 84128

Discussion: Scott Spendlove asked about the zoning of surrounding properties. Steve Lehman said basically the property north of 2900 South is zoned A (Agriculture). Some of the smaller lots in the area are zoned R-1-8 or R-1-10 (Single Family Residential).

Scott Spendlove asked if a complaint was filed against the Delgados in this case. Steve Lehman said Ordinance Enforcement was out on another case when someone asked why the Delgados can have a fence in their front yard and he can't. That triggered the citation on the Delgado property.

William Whetstone asked for clarification of the fence ordinance. Steve Lehman explained that a solid fence in a front yard can be 3' in height and a 4' fence must be 50% transparent. Someone in a vehicle can see over a 3' fence, however, a 4' fence would impair vision. Anything over 4', regardless of transparency, needs to be set back 20'.

William Whetstone asked Steve Lehman to briefly explain a sight triangle. Steve Lehman said curb lines at a corner are extended to a point inside of an intersection. 40' is measured back from that point along both sides of the curb and a third line is drawn across that measurement on both curbs to create a sight triangle. This view is to remain clear for the safety of both pedestrians and traffic. The sight triangle on the Delgado property is compliant with these regulations.

Roberto Delgado said if his fence was moved back 20', half of his property would be unusable and his animals would no longer have adequate room. His home has been broken into three times. Leslie Delgado said someone left a junk car in their back yard without permission. The police were called to remove it. Before the fence was put up, neighbors regularly cut through the Delgados' back yard and their home and their neighbors' homes were burglarized. A church is located across the street from the Delgado home. The Delgados feel their fence is needed for both privacy and security.

Roberto Delgado said the fencing on his property looks beautiful. The Delgados have received compliments on the fence. Leslie Delgado reported that contractors from Lowe's installed the fence. When she asked the contractors about the planned fence, they told her the measurements and plans were fine. Scott Spendlove noted that Lowe's is a reputable company and the Delgados contracted with them in good faith. Steve Lehman said the City does not require a building permit for fencing, only regulations are in place. Lowe's may have misinformed the Delgados regarding City regulations.

Sandy Naegle asked when the fence was installed. Roberto Delgado Jr. said it is a new fence, installed September and October of 2016. Scott Spendlove asked when the church across the street was built. Steve Lehman said it was constructed subsequent to the home, probably 5-6 years ago.

Motion: Scott Spendlove moved to approve B-6-2016.

Sandy Naegle seconded the motion.

Russell Moore read the five criteria that must be met for a variance to be granted (see the Ordinance Summary above) and Board members addressed each of them.

Necia Christensen noted that the property unfenced became a dumping ground for stolen cars and an attractive nuisance that resulted in robbery.

Scott Spendlove feels the property is unique because of the way the house is positioned on the property in comparison with other homes in the area. He has noticed properties along the same side of the road farther south on 2100 and 3100 South with solid fences over 4'. Having a church across the street puts it in a unique situation for privacy as well. There are many activities at the church with people coming and going. Necia Christensen pointed out that the location of the home on the property creates a very long frontage. The home is centered on the property where most homes are located on one side, and the home also faces a different direction than other surrounding homes.

Russell Moore does not agree it is a property right to have a 4' fence in the front yard. The code clearly states the height that is allowed, and he feels that allowing this variance will allow anyone to put up a 4' high solid fence. Necia Christensen sees that the fence protects the animals in the A (Agriculture) zone and protects surrounding neighbors from the view of the animals as well. Russell Moore stated that allowing this variance would not serve to support the ordinances as they exist and would create an unjust situation when others are required to comply with the fence code. Necia Christensen is in favor of granting the variance because of the uniqueness of the property.

A roll call vote was taken:

Necia Christensen	Yes
Sandy Naegle	Yes
Russell Moore	No
Scott Spendlove	Yes
William Whetstone	Yes

Motion Carries - B-6-2016 Approved – Majority

OTHER

Approval of July 6, 2016 Minutes – **Approved**

There being no further business, the meeting adjourned at 6:43 p.m.

Brenda Turnblom, Administrative Assistant